

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6753

BILL NUMBER: SB 371

NOTE PREPARED: Dec 22, 2010

BILL AMENDED:

SUBJECT: Penalties Imposed by Public Access Counselor.

FIRST AUTHOR: Sen. Mrvan

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill establishes an Education Fund to fund programs to train public officials and educate the public on the rights of the public and the responsibilities of public agencies under the public access laws. It allows the Public Access Counselor to assess civil penalties against a public agency for violating the public records law. It requires any civil penalties collected to be deposited in the Education Fund.

The bill also allows the Public Access Counselor to obtain an administrative subpoena to compel production of public records denied by a public agency if the Public Access Counselor determines that the records were wrongfully withheld.

Effective Date: July 1, 2011.

Explanation of State Expenditures: Summary - This bill could have an indeterminable fiscal impact on all public agencies beginning in FY 2012. The bill could increase expenditures of a public agency if the agency or any officer or employee of that agency knowingly, intentionally, or recklessly does any of the following:

- (1) Denies or interferes with a person's request for inspection or copying of a public record if:
 - (A) the person's request meets the requirements in statute; and
 - (B) the record is subject to disclosure by law.
- (2) Charges a copying fee that exceeds the amount permitted by statute.
- (3) Discloses without authorization or fails to protect information classified as confidential by state statute.

The bill allows the Public Access Counselor to assess a civil penalty of not more than \$100 for the first

violation, and not more than \$500 for each additional violation of the provisions above. The penalties are required to be deposited in the Education Fund established under the bill. The amount of penalties that will be collected is indeterminable because it will depend on the number of violations and the amount of the penalty imposed. The bill also allows the Public Access Counselor to subpoena public agencies for the production of public records if the Public Access Counselor finds that a public agency wrongfully denied access to a public record.

Background Information - Under IC 5-14-3-2, "public agency" means the following:

- (1) Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.
- (2) Any county, township, school corporation, city, or town, or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of any county, township, school corporation, city, or town, political subdivision, or other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, judicial, or legislative power of the state or a delegated local governmental power.
- (3) Any entity which is subject to either:
 - (A) budget review by either the Department of Local Government Finance or the governing body of a county, city, town, township, or school corporation; or
 - (B) audit by the State Board of Accounts.
- (4) Any building corporation of a political subdivision that issues bonds for the purpose of constructing public facilities.
- (5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.
- (6) Any law enforcement agency, which means an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the State Police Department, the police or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the Alcohol and Tobacco Commission, conservation officers of the Department of Natural Resources, gaming agents of the Indiana Gaming Commission, gaming control officers of the Indiana Gaming Commission, and the Security Division of the State Lottery Commission.
- (7) Any license branch staffed by employees of the Bureau of Motor Vehicles Commission under IC 9-16.
- (8) The State Lottery Commission established by IC 4-30-3-1, including any department, division, or office of the Commission.
- (9) The Indiana Gaming Commission established by IC 4-33, including any department, division, or office of the Commission.
- (10) The Indiana Horse Racing Commission established by IC 4-31, including any department, division, or office of the Commission.

Explanation of State Revenues: Revenues from a public agency violating the provisions of this bill will be distributed into the Education Fund. The amount of transfer is indeterminable and will depend on the number of violations and the amount of the penalty imposed as determined by the courts.

The nonreverting Education Fund established under the bill is required to be administered by the Treasurer of State and used to pay (1) expenses of administering the fund and (2) the administrative costs of training public officials and educating the public on the rights of the public and the responsibilities of public agencies under the public access laws.

Explanation of Local Expenditures: Local units and agencies are included in the definition of public agency. [Please refer to *Explanation of State Expenditures* for an explanation of this bill's impact on public agency expenditures.]

Explanation of Local Revenues:

State Agencies Affected: All.

Local Agencies Affected: All.

Information Sources:

Fiscal Analyst: Jessica Harmon, 317-232-9854.